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Letter dated 29 June 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 27 February 2004 (S/2004/153). The Counter-Terrorism Committee has received the attached fourth report from the Netherlands submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism.

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Annex

Letter dated 28 June 2005 from the Permanent Representative of the Netherlands to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instruction of my Government, I have the honour to transmit herewith the fourth report of the Kingdom of the Netherlands to the Counter-Terrorism Committee (see enclosure).

I would like to take this opportunity to reiterate the great appreciation of the Netherlands Government for the close cooperation with the Counter-Terrorism Committee and to reaffirm our commitment to provide the Committee with any additional information that the Committee deems necessary or may request.

(*Signed*) Dirk Jan **van den Berg**
Ambassador
Permanent Representative

Enclosure*

Fourth report on the implementation of Security Council resolution 1373 (2001)

Effectiveness in protection of economic and financial system

Question 1.1

Regarding the suppression of the financing of terrorism as required by subparagraph 1(a) of the Resolution, the CTC would appreciate receiving information as to how the Financial Intelligence Units (FIU) of Netherlands, Netherlands Antilles and Aruba are structured and staffed (financially and technically) so as to enable them to perform their mandated functions? Please provide appropriate data in support of the response to the above inquiry.

Aruba

The Unusual Transactions Reporting Centre (Aruba's FIU) is a government department accountable to the Minister of Finance and Economic Affairs, and also – with regard to its staffing and budget – to the Minister of Justice. The Centre is financially supported by the Aruban Government. The authorised staffing level is 13 persons. See the attached organisation chart.

Netherlands Antilles

The Unusual Transactions Reporting Centre (the Netherlands Antilles' FIU) is a government department accountable to the Minister of Finance. It is financially supported by the Netherlands Antilles Government. It currently has six members of staff, and this number will be increased to ten. Analysis of reported transactions focuses on both money laundering and financing of terrorism. Reported transactions are analysed with automatic searching tools and individually. The Central Police Service (CPD) is notified of suspect transactions electronically.

The Netherlands

The Dutch FIU, known as the Unusual Transactions Reporting Centre (*Meldpunt ongebruikelijke transacties*, MOT), is an independent administrative body within the organisational structure of the Ministry of Justice. It has 26 members of staff: 1 head, 1 deputy head, 1 policy advisor, 4 senior financial investigators, 5 financial investigators, 5 assistant financial investigators, 1 tax authority and tax investigation service liaison (seconded), 2 system managers, 1 senior strategic analyst, 2 strategic analysts, 1 data entry employee, 2 secretarial staff. In addition, 5 employees (including the policy advisor mentioned above) work in the FIU.net project bureau, which is run by the MOT, at the request of the European Commission.

Question 1.2

Sub-paragraph 1 (c) of the Resolution requires States to freeze funds and other financial or economic resources related to terrorism. In this regard, does the Netherlands have a separate authority or agency responsible for seizing and confiscating terrorist related assets? If the answer to the above question is in the affirmative, the CTC would appreciate receiving an outline of the legal basis for such an authority or agency, as well as an outline of its functions. Please also indicate the financial magnitude of the assets frozen due to their suspected connections with the financing of terrorism.

* Annexes are with the Secretariat and are available for consultation.

At present an amount of €272,128.66 is frozen in the Netherlands on the basis of administrative sanctions. The Netherlands does not have a separate authority or agency responsible for seizing and confiscating terrorist-related assets. However, a specialised bureau of the Public Prosecution Service (OM), the Proceeds of Crime Bureau (*Bureau Ontnemingswetgeving OM*, BOOM), functions as a national expertise centre in the fields of seizure and confiscation in general (with a help desk and team of advisors). BOOM also has specialised public prosecutors, accountants and civil-law experts, who provide assistance in complex criminal investigations where special knowledge of seizure and confiscation matters is needed. To date, no criminal confiscation proceedings have been instituted on the grounds of financing terrorism.

Question 1.3

Sub-paragraph 1 (d) of the Resolution requires States to have legal measures in place to regulate alternative money remittance agencies/transfer services and informal banking networks. The Netherlands' second report states (at page 4) that informal banking networks are prohibited in the Netherlands unless registered under the Money Transaction Offices Act. The CTC would appreciate receiving the number of money remittance agencies/transfer services registered and/or licensed in the Netherlands, Netherlands Antilles and Aruba.

General

In all three countries registered and supervised credit institutions are allowed to perform money-transfer services. For non-banks specific registration as a money-transfer company is required.

Aruba

The national ordinance on the supervision of money-transfer companies became effective on 12 August 2003. It prohibits operating a money-transfer company without being registered with the Central Bank of Aruba. Three companies are currently registered.

Netherlands Antilles

A national ordinance prohibits operating a money-transfer company without being registered with the Central Bank of the Netherlands Antilles. At present, Western Union has a licence to operate as a money-transfer company in the Netherlands Antilles. They have branches on Curaçao and St. Maarten. Furthermore, Banco Caribe N.V. has initiated the Western Union money transfer service on the island of Bonaire. In addition, there is also a company by the name of Union Caribe Curacao N.V. operating in Curacao which provides money transfer services.

The Netherlands

In the Netherlands the Money Transaction Offices Act requires money-transfer companies to be registered with the Dutch Central Bank. At present, 21 money-transfer offices are registered and 27 branches of these offices.

Question 1.4

The Netherlands' second report, in reply to question 2 (at page 3) states that the obligation to be vigilant and to report suspicious transactions will be extended to include "persons practicing liberal professions" such as lawyers, notaries and accountants. The CTC would appreciate receiving a progress report as well as an outline of the implementation of those measures.

The Decree designating liberal professions under the Compulsory Identity Act and the Disclosure of Unusual Transactions Act came into force on 1 June 2003. The Decree makes it obligatory to identify customers and report suspicious transactions in respect of the following activities.

The activities of *lawyers, notaries or persons and institutions exercising similar legal professions* (e.g. trust offices) in so far as they involve providing advice on or assistance with "the purchase or sale of immovable property, the administering of money, securities, coins, banknotes, precious metals, precious stones, the formation and management of companies, legal persons or similar bodies or the purchase, sale or takeover of businesses". Compulsory identification and notification also apply if the above-mentioned persons or institutions act on behalf of and for the account of a client in any financial or property transaction.

The activities of *tax consultants, public chartered accountants, public accounting consultants and other persons and institutions that perform similar activities* in so far as they provide tax advice, handle tax returns and perform activities connected with the compiling, assessing or auditing of annual accounts or the keeping of records.

The activities of *estate agents* in so far as they act as intermediaries in the purchase or sale of immovable property and rights to which property is subject.

For all the above-mentioned services, compulsory identification and notification only apply if the service is carried out on a self-employed, professional or commercial basis.

Question 1.5

Effective implementation of sub-paragraph 1(d) of the Resolution requires a State to have mechanisms in place to register, audit and monitor the collection and use of funds and other resources by religious, charitable and other associations, with a view to ensuring that these are not diverted to other than their stated purposes, in particular to the financing of terrorism. The CTC would appreciate receiving an outline of legal provisions in place in the Netherlands that fully meet the requirements of this sub-paragraph of the Resolution, or in their absence an indication of the steps it intends taking in this regard.

- All foundations (*stichtingen*) and associations are registered with the Chamber of Commerce, following approval by a notary.
- Foundations and associations are required to keep accounting records. They must also submit their financial statements to the Tax and Customs Administration if they wish to qualify for the reduced inheritance tax rate or if donors want their donations to be tax-deductible (around 14,000 organisations do so in the Netherlands).
- Under the Inheritance Act, the Tax and Customs Administration is responsible for auditing these financial statements and examining whether an organisation's spending is in the public interest. These audits are risk-oriented and are designed to ensure the collection of any tax due. However the audits will also take into account the risk of terrorist financing.
- If there is serious doubt about whether a foundation is complying in good faith with the statutory requirements or its constitution, or whether the board is discharging its duties properly, the Public Prosecution Service is authorised to question the foundation's board. Ultimately, measures resulting in the dismissal of directors or the winding up of the foundation may be taken.

- The Netherlands also has a Central Office for Fundraising Organisations (CBF), which oversees charities that agree voluntarily to abide by its standards. These are primarily the larger recognised charities (around 400). The CBF is considering extending its remit and introducing a degree of compulsion (e.g. making it known if a "suspect" organisation refuses to allow the CBF to look into it).
- FIOD-ECD plays an active role in investigating organisations. Suspect flows of funds to foundations and non-profit organisations are actively identified by the Unusual Transactions Disclosures Office. The General Intelligence and Security Service (AIVD) is also very active. Its work has led to the assets of a number of charities in the Netherlands being frozen.

In the near future, the Dutch parliament will be informed about the implementation of further measures that are being prepared at official level. The main points will be the transparency and accountability of foundations, the reliability of the register of the Chamber of Commerce, information sharing within the public sector and the Public Prosecution Service's role in exercising its civil powers in respect of foundations.

Question 1.6

In order effectively to implement sub-paragraph 2(e), States are required to take measures to ensure that terrorists and their supporters are brought to justice. In this regard the Netherlands provided its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relations to:

- *Typologies and trends to counter terrorist financing methods and techniques?*
- *Techniques for tracing property, which represents the proceeds of crime or which is intended to be used for the financing of terrorism, with a view to ensuring that such property is frozen, seized or confiscated?*

Specific knowledge, competence and expertise building in the field of combating terrorist financing (including typologies of terrorist financing, and methods of tracing and tracking assets), are provided by several kinds of initiatives.

1) Specialisation within all bodies involved in combating the financing of terrorism. This applies to the Dutch FIU (MOT), the specialised financial intelligence police unit (BLOM) and the Public Prosecution Service. Two specialised public prosecutors have been assigned the task of combating terrorism in general. A third specialised prosecutor has been assigned the specific task of combating the financing of terrorism. In the Netherlands every major criminal investigation is conducted in practice by an investigation team that includes financial specialists. Financial expertise is at hand at every level of the police services, be it local or national, following the introduction of major legislation on powers of investigation, including adequate seizure and confiscation measures, special investigation techniques and special financial investigation powers. The latest development is the implementation of the Protocol to the EU Mutual Legal Assistance Convention in June 2004.

   In addition, the fiscal investigation service, FIOD-ECD, conducts inquiries into financial crime, including underground banking and violation of measures to freeze terrorist assets under the Sanctions Act. The Public Prosecution Service has national prosecutors who are experts in terrorism, terrorist financing, money laundering and other financial offences. The designated prosecutors work closely together and meet regularly (OMTO meeting).

2) Several multidisciplinary bodies have been created. The Dutch procedure for freezing terrorist assets is directed by a group of representatives of the Ministry of Foreign Affairs, the Ministry of

Finance and the Ministry of Justice, the AIVD, the Public Prosecution Service and the financial supervisory authorities. This group gets together every two months to discuss practical issues concerning the implementation of financial sanctions and to exchange experiences. Topics of discussion include how to freeze economic resources and how to give the best guidance to the financial sector in order to make financial sanctions as effective as possible. Similar discussions are being held at European level between all member states in order to learn as much as possible from one other's experiences and to develop common best practices and guidelines.

In September 2003 a new coordination body was created for all operational (investigation) services involved in the fight against terrorism, called *Coördinerend Overleg Terrorismebestrijding* (COTb). Members include the AIVD, national police service, Public Prosecution Service, FIOD-ECD, Customs, Royal Military Police, and national security coordinator. COTb has monthly meetings with a view to exchanging information and coordinating efforts. The financing of terrorism is one of its targets.

To ensure optimal coordination and exchange of information between the relevant agencies, the inter-institutional Financial Expertise Centre (FEC) has been set up to coordinate collaboration between the various intelligence and enforcement agencies and the Public Prosecution Service on the one hand and the tax revenue services and financial regulators on the other. All have a role in maintaining the integrity of the financial sector.

The FEC board adopted, in June 2004, the proposal to review individual investigation files in a multidisciplinary setting, including activities concerning terrorist financing. The FEC board initiated several projects in 2004. For the majority of these projects individual investigation files are being reviewed by multidisciplinary project groups in which experts of the involved agencies are represented. In this way the material can be assessed from different angles *i.e.* from a criminal, fiscal and financial regulatory angle.

The participants in the FEC carry out joint research into developments in the field of financial and economic crime and the financing of terrorism, this research helping them to perform their duties better. In addition, information is gathered on possible offences that the individual participants have been unable to fully recognise on their own, in order to obtain an overview of these offences and to discuss how to deal with them using administrative and/or criminal law. This task is carried out by the FEC selection platform. Finally, the participants amass expertise in the field of investigation.

After the joint assessment of specific investigation files, the respective project teams present recommendations to the FEC board based on their findings. These recommendations can vary from proposals to amend specific provisions in Dutch law, specific operational investigative action to be undertaken by one or more participants or possibilities for enforcement. In the latter cases, the findings of a project team can be sent to the FEC selection platform as mentioned above so that action can be further coordinated.

3) Finally, it is very important to share the information collected about the typologies of financing terrorism and ways to combat it, in order to enhance awareness. That is why FEC reports have been openly publicised (i.e. in a investigation-proof version). Furthermore, almost all bodies involved in the fight against the financing of terrorism disseminate information via websites and conferences, within their own organisation and the branches they supervise (in the case of financial supervisors).

Furthermore the Netherlands attaches great value to the development of typologies on an international level, such as the Financial Action Task Force. The Dutch Ministry of Finance co-chairs the FATF typology working group. This year the subjects are money remitters and insurance companies.

Effectiveness of counter-terrorism machinery

Question 1.7
The Netherlands' third report states, in reply to question 1.4, that "the drafts of the legislation implementing the nine remaining UN conventions are expected to be finalized this year". The CTC would appreciate receiving a progress report on the implementation into domestic law of the relevant conventions and protocols relating to terrorism to which the Netherlands has already become a party.

As far as the Netherlands Antilles is concerned, the domestic legislative procedure has reached an advanced stage. Unfortunately, it is not yet possible to say when it will be completed. The government of the Netherlands Antilles is trying to ensure that the legislation enters into force as soon as possible.

As far as Aruba is concerned, the 12 UN conventions on combating terrorism have been implemented in Aruban legislation.

Question 1.8
Effective implementation of paragraphs 1 and 2 of the Resolution requires States to criminalize the financing of terrorism and ensure that those who participate in terrorism are brought to justice. The CTC would be grateful to have a progress report on the enactment of the Crimes of Terrorism Bill that, according to the Netherlands' third report (page 3), "is expected to come into force in mid-2004".

The Crimes of Terrorism Act entered into force on 10 August 2004 (see Annex I.B, under item 11).

Question 1.9
Effective implementation of legislation, covering all aspects of the implementation of the Resolution, requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international counter-terrorist strategies. Without compromising any sensitive information, the Netherlands is requested to outline how its special counter-terrorist strategies, policies and/or activities address the following areas:

- *Criminal investigation and prosecution;*
- *Counter-terrorist intelligence (human and technical);*
- *Links between terrorism and other criminal activities;*
- *Physical protection of potential terrorist targets;*
- *Emerging threats.*

On 24 January 2005 the Minister of Justice and the Minister of the Interior and Kingdom Relations sent a letter to the President of the House of Representatives of the States General outlining policy development and implementation in the area of combating terrorism. This letter is translated and attached to this report as Annex I.A.

Effectiveness of customs, immigration and border control

Question 1.10
Effective implementation of paragraphs 1 and 2 of the Resolution requires States to take the necessary steps to prevent terrorist acts. Sub-paragraph 2 (g) seeks to prevent the movement of terrorists or terrorist groups by having in place effective customs and border controls to prohibit and suppress the financing of terrorist activities. Does the Netherlands impose controls on the cross-border movement of liquid cash, negotiable instruments as well as precious stones and metals (e.g. by imposing an obligation to make a declaration or to obtain prior authorisation before any such movement takes place)? Please provide information concerning any relevant monetary or financial thresholds.

Controls on the cross-border movement of liquid cash, negotiable instruments and other items of value are part of the normal controls that Dutch Customs carries out. The customs authorities report unusual movements of money and commodities they encounter to the Unusual Transactions Disclosures Office. They file a report if they encounter a sum of €15,000 or more. In addition, the Royal Military Police, which controls and guards Dutch borders, reports any suspicious situations directly to the national police unit that analyses unusual transactions.

If money laundering is actually suspected (i.e. because money is concealed), the person in question will be arrested and handed over to the criminal justice authorities. In that case any items and assets found can be seized.

In addition, it is illegal to import diamonds into the Netherlands without an origin certificate (Council Regulation (EC) No. 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds).

The EU decided on a regulation covering controls on cash entering or leaving the Community on 13 June. This regulation will provide for an obligatory declaration of movement of cash across the external EU borders. As soon as possible after formalisation of the regulation, the Netherlands will start implementation procedures.

Question 1.11
Paragraph 2 of the Resolution also requires States to prevent the movement of terrorists and the establishment of safe havens. Regarding international flights, does the Netherlands compare the information contained in advanced passenger manifest programs with the information contained in counter-terrorist databases, with a view to scanning inbound passengers before they land?

The Aliens Decree 2000 requires the pilot in command of an aircraft to provide a border control officer with two copies of a crew and passenger list immediately after arriving in the Netherlands. The border control officer checks these lists by consulting the available investigation systems.

Controls on preventing access to weapons by terrorists

Question 1.12
Sub-paragraph 2 (a) of the Resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny access to weapons to terrorists. With regard to this requirement of the Resolution as well as to the provisions of the Convention on the Marking of Plastic Explosives for the

purpose of Detection and the International Convention for the Suppression of Terrorist Bombings please provide the CTC with information relevant to the following questions:

- *What national laws, regulations and administrative procedures exist to exercise effective control over firearms, ammunitions, and explosives in the following areas?*
  - *Production;*
  - *Export;*
  - *Import;*
  - *Transit;*
  - *Retransfer.*
- *What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:*
  - *Small and light weapons;*
  - *Other firearms, their parts and components and Ammunition;*
  - *Plastic explosives;*
  - *Other explosives and their precursors.*

Relevant acts and decrees are:

- the Weapons and Ammunition Act;
- the Import and Export Act 1962;
- the Strategic Goods (Import and Export) Decree;
- the Decree on the Issue of Declarations for Strategic Goods, which forms the basis for International Import Certificates and Delivery Verification Certificates;
- the Strategic Goods (Financial Transactions) Decree 1996, which requires a licence for Dutch legal or natural persons financially involved in the trade of strategic goods that are in transit or otherwise outside the EU;
- the Economic Offences Act, which provides for the imposition of sanctions in case of breaches of the aforementioned legislation and sets out the framework for control and enforceability;
- the Sanctions Act, which provides for the implementation of recommendations, resolutions and agreements of international organisations on international trade sanctions for military or other goods.

The UN Firearms Protocol will be implemented in the Weapons and Ammunition Act. Measures have to be taken to ensure that firearms imported into the Netherlands are marked. The simple and unique marking has to be appropriate, permitting identification of the country of import and, where possible, the year of import. The marking is not required on firearms temporarily imported for verifiable lawful purposes.

Question 1.13

Also in relation to Sub-paragraph 2 (a) of the Resolution, the Netherlands indicated, in its first report (at page 6), that "where necessary, arms export regulations applying throughout the Kingdom will be amended or extended to allow effective monitoring of the import, transit and export of strategic goods, including financial involvement with such movements". The CTC would appreciate a progress report in relation to the matters covers by that statement.

As far as the extensive existing legislation is concerned, in 2004 the obligation to report transit transactions involving military goods was extended to cover all goods on the Netherlands' military list.

Other issues

In addition to the answers on the questions put forward by the Committee, the Netherlands would like to bring the following under the attention of the Committee.

In our report to the Counter Terrorism Committee dated 22 December 2001, the Netherlands set forth the existing legislation for freezing accounts and assets at banks and financial institutions, both on a national and European level. Since December 2001 the Netherlands has identified some obstacles with regard to enforcing effective and preventive freezing measures, especially with regard to creating an effective freezing mechanism on a European level. Although the Netherlands has the possibility to freeze assets nationally, the Netherlands prefers to act through the European Union in this respect, as European freezing orders are likely to be more effective given the integration of the European financial markets, as well as the international character of terrorism and terrorist financing.

The obstacles which the Netherlands encountered, are primarily related to the level of evidence that is required before a person or entity can be placed on the so-called freezing list. According to the Netherlands, the belief of some states that a designation would only meet sufficient (legal) safeguards if a national judicial procedure is officially started and/or concluded, seriously undermines the preventive capacity, and hence the effectiveness, of any freezing system. Such a procedure does not only interfere with the possibility to act swiftly upon suspicions (for example by intelligence services), but also increases the risk that the targeted person or entity will be made aware of the suspicions *before* being designated, and therefore will seek to transfer funds in order to bring them out of reach of (European) freezing procedures.

The limitations of the current freezing mechanism are increasingly disruptive, as we are approaching a new phase in which the focus is shifting to individuals and charitable organisations, as well as to other organisations which can pose as front organisations for listed entities. It will only be possible by such a new focus to really tackle financing for terrorist purposes. In this new phase, the importance of sound intelligence which shows links between already listed organisations and front organisations, will only grow. Preventive freezing could be a major tool in this new phase, but only if we will be able to apply it in a sufficiently flexible way, adjusted to the actual threats.

We would like to underline that of course any designation should be supported by sufficient evidence, and the rule of law should be respected, implying sufficient safeguarding of the rights of the person or entities involved. This should include effective procedures for legal recourse and swift and efficient de-listing procedures. However, as stated before, this should not automatically imply that designations can only take place if supported by a preceding judicial decision. We should seek the correct balance in this regard.

The reason for bringing this issue under the attention of the Committee is that we feel that there is a need for more clarity with regard to this subject. We feel that progress could be achieved if the UN Counter Terrorism Committee could underline, either through best practices or otherwise, the need for strong preventive freezing measures.